

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JERALD STURGIS,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 05-359J
)	Judge Gibson
SECRETARY OF DEPARTMENT OF)	Magistrate Judge Caiazza
CORRECTIONS, <i>et al.</i> ,)	
)	
Respondents.)	

NOTICE AND ORDER (§2254)

TO THE PETITIONER IN THE ABOVE ACTION:

Your petition for writ of habeas corpus which was filed pursuant to 28 U.S.C. §2254 was received by the Clerk of Court. You are hereby notified that federal law requires you to include all of your federal constitutional claims challenging a specific conviction in one habeas corpus petition. In other words, if this petition is denied after consideration of your claims on the merits you will not be able to file another petition at a later time challenging the same conviction on other grounds. In addition, you cannot present a federal constitutional claim to this Court until you have properly presented it to the courts of the Commonwealth of Pennsylvania. Therefore, if you have not yet presented all of your claims to the courts of the Commonwealth of Pennsylvania you may wish to withdraw this petition so that you may properly present all of your claims to the Pennsylvania courts and then file a later petition with this Court presenting

all of your federal constitutional claims. However, you are also advised that pursuant to 28 U.S.C. §2244(d)(1) federal habeas corpus petitions must be filed within one year after the judgment becomes final. Therefore, at the present time you must choose (1) whether you wish to have the court rule on your petition as filed, (2) whether you wish to amend your petition to include additional constitutional claims; however, if you elect to amend your petition and if the amendment is not filed within 120 days of the date that the court receives notification of your intention to amend, this will be considered to be a decision by you to have the petition adjudicated in the form in which it was filed; or (3) whether you wish to withdraw your petition so that you can file a petition at a later time which will include all of your federal constitutional claims. If you elect to withdraw the §2254 petition presently on file, that petition will be considered to have been withdrawn as of the date your notice to do so is received, and the statute of limitations will be tolled for a period of 120 days from that date to give you time to file a new §2254 petition. Mason v. Myers, 208 F.3d 414 (3d Cir. 2000). After that 120-day period has expired, the original one-year statute of limitations will commence to run again, and you will have the time, if any, which was remaining on that one-year period as of the date your pending petition was executed, June 13, 2005, in which to file a timely petition under §2254.

You are advised that should you elect to have your petition ruled upon as filed (Option 1), as required by §2244(b)(3)(A) you will be barred from filing a second or subsequent petition absent authorization by the Court of Appeals.

This Notice does not enlarge the one-year limitation period set by 28 U.S.C. §2254 or in any other way bear upon the question of whether or not the §2254 petition which you filed with the court in fact was filed within the limitation period.

AND NOW, this 7th day of September, 2005;

IT IS HEREBY ORDERED that, within fifteen (15) days of the date of this notice, Petitioner shall sign and return to the Clerk of the United States District Court for the Western District of Pennsylvania one of the two copies of the attached form, indicating which of the three options he has selected. If he fails to return the attached form within fifteen (15) days of the date of this notice the Court shall rule upon the petition as filed and he will not be able to file another petition at a later time raising new issues.

IT IS FURTHER ORDERED that Petitioner is allowed ten (10) days from this date to appeal this order to a district judge pursuant to Rule 72.1.3(B) of the Local Rules for Magistrates. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

s/Francis X. Caiazza
Francis X. Caiazza
U.S. Magistrate Judge

Option 1

I, JERALD STURGIS, elect to have my petition for writ of habeas corpus ruled upon as filed with the understanding that I will be barred from filing a second or subsequent petition unless I am granted permission by the court of appeals.

PETITIONER'S SIGNATURE

DATE

OPTION 2

I, JERALD STURGIS, elect to file an amended petition.

PETITIONER'S SIGNATURE

DATE

OPTION 3

I, JERALD STURGIS, withdraw my petition with the understanding that I may, within the one-year statutory period provided by section 2244(d), file a petition that includes all of the federal constitutional claims I wish to raise.

PETITIONER'S SIGNATURE

DATE

cc:
Jerald Sturgis, DV-7454
SCI Houtzdale
P.O. Box 1000
Houtzdale, PA 16698